

IN THE CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

STATE EX REL. PATRICK MORRISEY,
ATTORNEY GENERAL OF THE STATE OF
WEST VIRGINIA,

Plaintiff,

v.

Civil Action No.: 13-C-9
Judge Booker T. Stephens

NATIONWIDE AFFINITY INSURANCE COMPANY OF AMERICA,
NATIONWIDE AGRIBUSINESS INSURANCE COMPANY,
NATIONWIDE ASSURANCE COMPANY,
NATIONWIDE GENERAL INSURANCE COMPANY,
NATIONWIDE INSURANCE COMPANY OF AMERICA,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
NATIONWIDE MUTUAL INSURANCE COMPANY, and
NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement And Release ("Agreement") is entered into this 22nd day of June 2015, by and between plaintiff Patrick Morrissey, Attorney General of the State of West Virginia, acting on behalf of the State of West Virginia and certain of its citizens and consumers, as more fully described herein (collectively, the "Attorney General," or "plaintiff") and as the representative of any individual or entity claiming by or through Plaintiff, on the one hand, and defendants Nationwide Affinity Insurance Company of America, Nationwide Agribusiness Insurance Company, Nationwide Assurance Company, Nationwide General Insurance Company, Nationwide Insurance Company of America, Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company, and Nationwide Property and Casualty Insurance Company (collectively, "Nationwide," or "defendants"), on the other hand. The Attorney General

and Nationwide are referred to collectively as “the Parties” in various points in this Agreement. In consideration of and in reliance upon the terms of this Agreement, including the recitals, the Parties mutually agree as follows:

WHEREAS, Nationwide does business in the State of West Virginia;

WHEREAS, the Attorney General filed suit against Nationwide on or about January 11, 2013, in McDowell County, West Virginia, in a case originally captioned State ex rel. Darrell V. McGraw, Jr., Attorney General of the State of West Virginia v. Nationwide Affinity Insurance Company of America, et al., Civil Action No. 13-C-9, and subsequently re-captioned as State ex rel. Patrick Morrissey, Attorney General of the State of West Virginia v. Nationwide Affinity Insurance Company of America, et al. (“the Lawsuit”);

WHEREAS, in his original complaint, the Attorney General asserted claims in the Lawsuit under the West Virginia Unfair Trade Practices Act, and the West Virginia Consumer Credit and Protection Act, allegedly on behalf of all the citizens or residents of West Virginia in connection with Nationwide’s offering of an insurance discount on certain insurance products to West Virginia Farm Bureau members who were Nationwide insureds (the “Farm Bureau Discount”);

WHEREAS, on February 19, 2015, the Attorney General sought leave to assert claims in a proposed amended complaint that repeated and/or restated allegations from the original complaint, and sought to add causes of action under the West Virginia Uniform Unclaimed Property Act, and for breach of contract and unjust enrichment, also in connection with the Farm Bureau Discount;

WHEREAS, at various junctures in pleadings and filings in the case, the Attorney General made other and additional allegations all arising from and relating to Nationwide’s Farm Bureau

Discount and the same underlying transactions and occurrences between Nationwide and certain West Virginia citizens and/or consumers;

WHEREAS, the claims asserted by the Attorney General in the Lawsuit in connection with Nationwide's West Virginia Farm Bureau Discount included, but were not limited to, claims that the Farm Bureau Discount should not have been offered and/or was discriminatory, claims that the Farm Bureau Discount was not provided and/or was not provided in full to eligible insureds, claims that Nationwide did not act consistently with its rate filings with respect to the Farm Bureau Discount, claims that Nationwide's Farm Bureau-related marketing was unfair, deceptive, and/or misleading to West Virginia citizens and/or consumers, claims that Nationwide improperly sold Farm Bureau memberships as a joint venturer with the West Virginia Farm Bureau, and claims that Nationwide improperly retained funds that should be distributed to West Virginia insureds and/or escheat to the State of West Virginia;

WHEREAS, the Attorney General asserts in the Lawsuit that he is bringing claims on behalf of, and represents, the citizens and consumers of West Virginia, specifically including both the West Virginia Czaplenski opt outs, and those citizens and consumers of West Virginia and/or any individual or entity claiming by or through Plaintiff, adversely affected by Nationwide's alleged conduct regarding the Farm Bureau Discount;

WHEREAS, Nationwide denied and continues to deny liability in the Lawsuit; denied and continues to deny that the Attorney General had authority, standing or jurisdiction to pursue such claims, and/or to otherwise regulate the business of insurance in West Virginia; and asserted affirmative defenses in its answer to the complaint and in the course of the Lawsuit;

WHEREAS, the Parties disputed in the Lawsuit the threshold issue of the Attorney General's claimed authority, standing, or jurisdiction to bring the claims asserted;

WHEREAS, in the course of the Lawsuit, the Parties disputed the effect of the settlement of a multi-state class action involving Nationwide's Farm Bureau Discount, in a case called Czaplenski v. Nationwide Mutual Insurance Company, et al., Case No. 1:12-cv-03078, United States District Court for the Northern District of Ohio ("the Czaplenski class"), as well as the authority of the Attorney General to represent certain West Virginia opt-outs to the Czaplenksi class action settlement ("West Virginia Czaplenski opt outs");

WHEREAS, the Parties mediated the Lawsuit on March 3 and 4, 2015, and reached an agreement in principle to settle the Lawsuit, including, but not limited to, any and all claims that were asserted, could have been asserted, and/or should have been asserted by the Attorney General now or in the future, directly and/or on behalf of any citizen, entity, or agency;

WHEREAS, the Parties understand and agree that it is in their best interest to compromise, resolve, and settle all claims and all disputes arising out of and relating to the subject matter of the Lawsuit, in good faith and without admission of fault; and

WHEREAS, the Parties understand and agree that this Agreement is to settle disputed litigation claims, and is not intended as an admission of fault, imposition of a fine or penalty, or a concession of authority, standing, or jurisdiction by Nationwide vis à vis the Attorney General with respect to the matters asserted.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and shall constitute an integral part of this Agreement. This Agreement shall be interpreted in light of those recitals.

2. **Court Approval.** The terms of this Agreement are contingent upon Court review and approval of the settlement and release effected herein, pursuant to a stipulated order of dismissal with prejudice, including Court approval of a full release of all Nationwide entities, agents and employees consistent with the release set forth in Paragraph 4 below. The Parties' agreed form of Stipulated Order Of Dismissal With Prejudice is attached hereto as Exhibit A. Nationwide shall make the Settlement Payment described in Paragraph 3 below within five business days of Court approval of this Agreement.

3. **Settlement Amount And Payment.** The total settlement amount is Five Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$5,750,000.00) (the "Settlement Payment"), and shall be made payable via wire transfer to the trust account of Tiano O'Dell, PLLC, on behalf of its client, State ex rel. Morrissey, Attorney General of the State of West Virginia, in full settlement of all past, present, or future claims, whether known or unknown, asserted or unasserted, anticipated or unanticipated, which have been, may have been or may in the future be asserted by the Attorney General, the State of West Virginia, its public entities, agencies, offices, departments, political subdivisions, as well as West Virginia citizens, entities and/or consumers or any who or which could claim through any Plaintiff who purchased Nationwide insurance products that were subject to or potentially subject to a Nationwide Farm Bureau Discount, and West Virginia Czaplenski opt outs, against Nationwide arising out of or relating to, directly or indirectly, the existence, administration, calculation, application, rate filing, availability, refund marketing, and/or communications of the Nationwide Farm Bureau Discount in West Virginia and/or to West Virginia citizens and/or consumers, as more fully described in infra, Paragraph 4 of this Agreement, below. The Attorney General and his outside counsel hereby acknowledge the receipt and sufficiency of the Settlement Payment to constitute full and final satisfaction of all claims for

damages, penalties (whether statutory, regulatory, and/or common law), equitable relief, restitution, disgorgement, excess charges, prejudgment and/or post judgment interest, reimbursements, indemnification, attorneys' fees, attorney costs, and/or other litigation expenses or costs, including, but not limited to, expert fees, costs and expenses, as more fully described in infra, Paragraph 4 of this Agreement, below. The Attorney General agrees to pay all fees, costs and expenses due to his attorneys and outside counsel, as well as all expenses including, but not limited to legal, accounting, consulting, expert, and/or other persons providing services to the Attorney General and/or his counsel related to the Lawsuit. The Attorney General further agrees that Nationwide, other than providing the Settlement Payment to the Attorney General and his counsel, Tiano O'Dell, PLLC, as set forth herein (above), will in no way be responsible for the Attorney General's attorneys' fees and costs or other litigation expenses, in the Lawsuit or the underlying investigation, and/or for past, present, and/or future services related to, or arising out of, the subject matter of this Agreement.

4. **Release Of Liability.** The Attorney General, for and on behalf of himself, the State of West Virginia, and its public entities, agencies, offices, departments, political subdivisions, West Virginia citizens, entities and/or consumers who purchased Nationwide insurance products that were subject to or potentially subject to a Nationwide Farm Bureau Discount (depending on the West Virginia Farm Bureau membership status of the insured), and West Virginia Czaplenski opt outs, does hereby release, discharge and relinquish any and all claims, whether formally asserted or not, known or unknown, past, present and future, for damages, claims, duties, obligations, liabilities, causes of action, demands, costs, penalties, administrative actions, breach of contract, declaratory judgment, negligence, promissory estoppel, bad faith, fraud, fraudulent inducement, negligent misrepresentation, conspiracy, reasonable expectations, false advertising,

West Virginia Unfair Trade Practices Act violations, West Virginia Consumer Credit and Protection Act violations, West Virginia Uniform Unclaimed Property Act violations, equitable relief, injunctive relief, restitution, disgorgement, excess charges, attorney's fees, litigation fees/costs/expenses of any sort, interest, awards, contributions, indemnities, punitive or exemplary damages of any kind or type, insurance payments or reimbursements, or other legal, administrative, regulatory, statutory or equitable relief whatsoever, whether existing at law, equity, statute, regulation, contract or otherwise, including without limitation, the claims against the Nationwide defendants, their respective subsidiaries, related companies, affiliates, parent corporations, divisions, administrators, executors, predecessors, successors, assigns, officers, directors, holding companies, shareholders, joint venturers, partners, employees, sureties, agents, insurers, and attorneys, arising out of and/or relating to, directly or indirectly, the Nationwide Farm Bureau Discount; and/or the subject matter of the Lawsuit, provided, however, that each party expressly retains the right to enforce the terms of this Agreement. In plain language by payment of \$5,750,000.00, Nationwide is released from any and all liability in the State of West Virginia arising out of or related to the Farm Bureau Discount and/or any and all claims asserted in the Lawsuit.

The Parties agree that this Agreement shall inure to the benefit of and be binding upon the Parties and anyone who could claim through them to this Agreement their insurers, representatives, administrators, executors, predecessors, successors, assigns, subsidiaries, related companies, affiliates, parent corporations, divisions, officers, directors, holding companies, shareholders, employees, sureties and agents.

5. West Virginia Czaplenski Opt Outs. With respect to the West Virginia Czaplenski opt outs, and notwithstanding any statute of limitations asserted or other defense asserted and/or otherwise available to Nationwide, the Parties agree as follows:

(a) To the extent determinable from the reasonably available data, the Parties agree that the parties will identify each individual West Virginia Czaplenski opt out, and determine if each such opt out has a valid claim for reimbursement of any Farm Bureau Discount, as well as the number of policy terms for which each such opt out did not receive a Farm Bureau Discount that the opt out was entitled to receive, if any.

(b) Those West Virginia Czaplenski opt outs identified as having valid claims for reimbursement are to be reimbursed, plus interest, by the Attorney General from the Settlement Payment.

(c) The reimbursements made by the Attorney General to West Virginia Czaplenski opt outs identified as having valid claims for reimbursement shall be equivalent to what those persons would have been otherwise entitled to receive from the Czaplenksi class action settlement had they not opted out of that settlement.

(d) The Attorney General shall have sole responsibility to administer the claims of, and make payments to, the West Virginia Czaplenski opt outs and shall examine the individual circumstances of each claimant so as to ensure that each individual is treated fairly. Any payment or reimbursement to a West Virginia Czaplenski opt out as described in this Agreement shall come from the Settlement Payment. Other than providing the Settlement Payment to the Attorney General as described in supra, Paragraph 3 of this Agreement, Nationwide shall have no responsibility to make any payments to the West Virginia Czaplenski opt outs or to administer any

claim or be in any way responsible for any additional payment, including but not limited to as it relates to payment and/or offer of membership in the West Virginia Farm Bureau.

(e) Should any West Virginia Czaplenski opt out file a civil action or administrative complaint related to the Farm Bureau Discount, the Attorney General at its own expense and in good faith agrees to (i) intervene in such proceeding; (ii) defend the Attorney General's claimed authority, standing, and jurisdiction to enter into this Agreement, (iii) defend the validity and enforceability of this Agreement; and (iv) defend the binding, preclusive, res judicata effect of this Agreement and the agreed order of dismissal with prejudice of the Lawsuit contemplated by this Agreement. Counsel for the Attorney General further agree not to encourage or solicit in any way whatsoever (including, but not limited to referrals to other counsel) any person in filing any civil action or administrative complaint related to the Farm Bureau Discount, in West Virginia and/or any other state or jurisdiction with similar Farm Bureau discount programs.

6. **Representations Of The Attorney General.** The Attorney General represents and warrants that he is the sole owner of the claims, rights of action, causes of action or any and all other entitlements relating to the Lawsuit, which are the subject of this Agreement, and that he has the authority to represent and does represent the interests of himself, the State of West Virginia, its public entities, agencies, offices, departments, political subdivisions, West Virginia citizens and/or consumers and citizens or entities, who or which claim, or could have claimed, through him, who or that purchased Nationwide insurance products that were subject to or potentially subject to a Nationwide Farm Bureau Discount, and West Virginia Czaplenski opt outs (collectively, "the Releasing Parties"). The Attorney General represents and warrants that he has not assigned, pledged, hypothecated or otherwise divested or encumbered all or part of any of the claims, rights of action, causes of action or any and all other entitlements relating to the Lawsuit,

which are the subject of this Agreement. The Attorney General further warrants that he is acting within his constitutional, statutory and common law rights conferred upon him by the State of West Virginia in entering this Agreement.

The Attorney General represents and warrants he understands and agrees that this Agreement is an agreement to settle a disputed litigation claim and is not a concession or admission by Nationwide, by whom no liability is admitted, that the Attorney General has standing, authority, or jurisdiction to regulate the business of insurance in West Virginia, including, but not limited to, advertising and/or rate filings thereto.

The Attorney General represents and warrants that he acknowledges the binding, preclusive, res judicata effect of Judgment Entry Of Final Order Of Settlement in the Czaplenski class action on October 8, 2014, and that he shall take no steps, directly or indirectly, through counsel or otherwise, to undermine the finality of that judgment.

7. **Non-Prejudice/Construction Of Agreement.** This Agreement is not intended to be construed as an admission of liability, nor shall it be construed as a waiver, modification or retraction of the positions of the Parties with respect to the issues raised in the Lawsuit. This Agreement is the product of an informed negotiation and involves compromises of the Parties' previously stated legal positions. This Agreement does not reflect upon the Parties' views as to their rights and obligations and is entered without prejudice to the positions taken by the Parties in other proceedings. The Parties agree that the existence of the Agreement, and the terms thereof, will not be used by the Parties for any purpose other than those expressly delineated in this Agreement. This Agreement shall not be cited by the Attorney General as precedent in any future dealings, litigation, or administrative process by the Attorney General with respect to Nationwide. Nothing in this Agreement shall be admissible against Nationwide in any legal or administrative

proceeding, or serve as the basis of any disqualification of any Nationwide entity for any license or privilege within the power of the Attorney General, the State of West Virginia, its public entities, agencies, offices, departments, political subdivisions, to grant.

The Parties specifically disavow any intention to create rights in any third-parties under or in relation to this Agreement, except as specifically set forth in this Agreement. The Parties reaffirm that this Agreement and the negotiations surrounding this Agreement shall not be admissible in any suit, action, or other proceeding, except as shall be necessary to enforce the terms of this Agreement or as may be required by law. The Attorney General acknowledges, understands and agrees that the acts done and evidenced by the Agreement are done and granted solely to avoid costs and are not an admission of liability by Nationwide, or a concession or admission by Nationwide of claimed Attorney General standing, authority, or jurisdiction with respect to the regulation of the business of insurance in West Virginia.

8. **Dismissal With Prejudice.** Upon the Attorney General's receipt of the Settlement Payment and fully executed Agreement, as set forth above, the Attorney General agrees to promptly dismiss with prejudice all claims asserted against all named defendants in the Lawsuit, except the Court shall retain jurisdiction of this matter for the sole purpose of enforcing the terms of this Agreement. The Attorney General has instructed his counsel to promptly execute and file a Stipulated Order Of Dismissal With Prejudice pursuant to West Virginia Rule of Civil Procedure 41(a), and to expressly state in the notice of dismissal or stipulation that the dismissal is with prejudice. The Attorney General agrees to take such additional actions, by and through counsel, as may be necessary to effect a full and final dismissal with prejudice of all claims asserted against all named defendants in the Lawsuit.

9. **Court Costs.** Each party to bear its own costs.

10. **No Modification.** This Agreement may only be modified or amended by written agreement, entered into subsequent to the date of this Agreement and duly executed by the Parties to be bound.

11. **Execution In Counterparts.** This Agreement may be executed in multiple counterparts and shall be effective when completely executed by all parties.

12. **Entire Agreement.** The Parties acknowledge and agree that: (a) this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof; (b) this Agreement merges and supersedes all prior discussions, proposals, representations, promises, agreements, and understandings, both written and oral, express or implied, between the Parties with respect to the subject matter hereof; and (c) the terms of this Agreement are contractual and not a mere recital.

13. **Authorization To Execute Agreement.** The individuals signing this Agreement and the persons and or entities on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the persons and or entities for whom they have signed.

14. **Non-Disparagement.** The parties understand and agree that while neither the fact of this settlement nor the amount of settlement are confidential, both sides agree in order not to disparage one or the other, that statements and comments will be generally as follows:

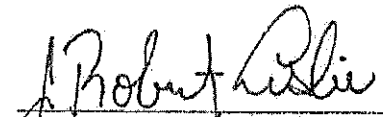
- (1) The amount of the settlement;
- (2) A statement in general terms:
 - (a) there was a mutually beneficial resolution reached in this matter;
 - (b) each party wanted to resolve the uncertainties of the litigation, without admission of fault, and to move forward; and
 - (c) the parties cooperated in good faith to resolve these issues.

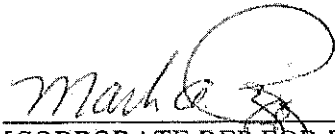
15. Choice Of Law. This Agreement shall be interpreted under the laws of the State of West Virginia.

16. Authorship. The Parties acknowledge and agree that, while counsel for Nationwide prepared the initial draft of this Agreement solely as an accommodation to the Parties, the Agreement thereafter was reviewed by counsel for the Attorney General and thus became the joint product of the Parties. Therefore, should construction of the Agreement be required, it will be considered the joint product of the Parties and thus no provision shall be construed against any Party because of authorship.

17. Effective Date. This Agreement shall be effective on the last date executed on the following pages.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement and Release to be executed in duplicate as of the date last set forth below.

 Date: 6/22/15
Robert Leslie, Esquire
Deputy Attorney General, duly authorized on behalf of
Patrick Morrissey, Attorney General of West Virginia
Office of the Attorney General
Building One Room 26-B
Capitol Complex
Charleston, WV 25305



Date:



[CORPORATE REP FOR EACH DEFENDANT]

One Nationwide Plaza,
Columbus, OH 43215